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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

ARTHUR TATE, JR., WARDEN,
Petitioner,

v.

JOHN GLENN,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL ARGUMENT

This supplemental brief is submitted pursuant to Rule 15.8, Rules of this Court, to bring to the Court's attention cases, not available at the time of the initial petition, which establish a deepening division and uncertainty as to whether the standard-of-review amendments to 28 U.S.C. §2254 apply to pending cases.

Some lower courts have attempted to avoid reaching the merits of the issue. *See*: ***Bennett v. Angelone***, 1996 U.S. App. LEXIS 21003 * 7 (4th Cir., August 20, 1996) (determining relief would be denied under "pre-Act habeas law."); ***Remeta v. Singletary***, 85 F.3d 513 (11th Cir. 1996) (same); ***Dickerson v. Vaughn***, 90 F.3d 87, 90 (3rd Cir. 1996) (applying more deferential test of Act because "the resolution of the issues in this case would not differ under either version of the statute"). ***Ayala v. Speckard***, 89 F.3d 91 (2nd Cir. 1996) (same); ***Cockrun v. Johnson***, 1996 U.S. Dist. LEXIS 10828 (E.D. Tex., July 25, 1996) (deciding case under both pre- and post-Act version of statute);[1] ***Callins v. Johnson***, 89 F.3d 210 (5th Cir. 1996) (same).

Other lower courts have attempted to resolve the issue with mixed results. ***See Leavitt v. Arave***, 927 F. Supp. 394 (D. Idaho 1996) (amendments applicable to pending cases);

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[1] *See id.* at * 8 ("[I]t is also recognized that the courts that have addressed the issue of the AEDPA's effect on pending cases have not all reached the same conclusion as is reached in this case. Indeed it is difficult to find any point of agreement at all among the many recent decisions on this difficult and important question. In light of this uncertainty it would be imprudent to fail to consider the AEDPA altogether in the opinion. Thus, Cockrun's claims will be analyzed first under the pre-AEDPA law, and second, in the alternative, his claims will be evaluated under the AEDPA.")

United States of America ex rel. Slaughter v. Gilmore, 1996 U.S. Dist. LEXIS 11107 (N.D. Ill. E.D., July 25, 1996) (amendments not applicable); *Boria v. Keane*, 90 F.3d 36 (2nd Cir. 1996) (same). Most recently, the United States Court of Appeals for the Seventh Circuit heard argument *en banc* on this issue in *Aaron Lindh v. James P. Murphy*, No. 95-3608.

CONCLUSION

For the above reasons, as well as those set forth in the Petition, the Court should grant certiorari, or in the alternative remand the case for reconsideration in light of the recent amendments to 28 U.S.C. §2254.

Respectfully submitted,

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